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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
ITSUO SAKAKIBARA : EXAMINER: DOAN, ROBYN KIEU
SERIAL NO: 10/591,763 :
FILED: SEPTEMBER 1, 2006 : GROUP ART UNIT: 3732
FOR: METHOD OF PERMANENT WAVE :
TREATMENT

DECLARATION UNDER 37 C.F.R §1.132

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Itsuo Sakakibara states that:

1. I am a sole inventor and an applicant of the above-identified application.
2. I have been working as a beauty specialist for 37 years and I have been researching a permanent wave treatment for 20 years.
3. I have read and understood Takehana, US 6,526,988.
4. The following experiments were performed by me or under my supervision.
5. Example 1: Hair is treated with the permanent treatment method as in Claim 1

of the above-identified application. *See* Fig. 1(b).

The permanent treatment liquid including thioglycolic acid was adhered to the position adjacent to the hair root, which had been shampooed to remove a hair dressing and oil contents. The permanent treatment liquid was supplied to the hair roots. Thereafter, the hair was pulled with a force of 0.5 kg/cm² or more while warming the hair to a predetermined temperature, wherein the permanent treatment liquid was adhered thereon.

Figure 1(a) is a photograph of the hair before the treatment and Figure 1(b) is a photograph of the hair treated as described above.

After the treatment, the newly grown hair is straight. The hair in the backside relative to the ear, in other words, the right side in the photograph, is slightly waved (see Fig. 1(b)).

The difference in the shape of the newly grown hair provided by the claimed method and that of Takehana is because the hair in the front side relative to the ear, in other words, the left side in the photograph, was pulled by a man with a force of about 1 kg/cm^2 (as in claim 1) and the hairs in the backside relative to the ear, in other words, the right side in the photograph, was pulled by a woman with a force of about 0.2 kg/cm^2 (which is outside of the claimed force).

6. From the data of Example 1, it is clear that pulling the hair with a force of 0.5 kg/cm^2 or more, as in the claimed method, provides an advantageous result that is not apparent for a skilled person. Specifically, the newly grown straight hair does not grow when the hair is treated according to the method of Takehana in which the hair is not pulled with a force of 0.5 kg/cm^2 or more.

7. Example 2: Another Example of treating hair with the permanent treatment as in Claim 1 of the above-identified application. *See* Fig. 2.

The permanent treatment liquid including thioglycolic acid was adhered to the position adjacent to the hair root, which had been shampooed to remove a hair dressing and oil contents. The permanent treatment liquid was permeated to the hair roots. Thereafter, the hair was pulled with a force of 0.5 kg/cm^2 or more while warming the hair to a predetermined temperature, wherein the permanent treatment liquid was adhered to the hair roots.

Fig. 2(b) shows that the hair covered with the long hair growing up from the top of the head is straight. However, Fig. 2 (a) shows that the hair, which is growing up from the

neighborhood of the border between the top of the head and the back of the head, is slightly waved.

The hair, which are growing up from the neighborhood of the border between the top of the head and the back of the head, is slightly waved because the hair in this area was not washed sufficiently and the oil contents remained in the hair root and, thus, the permanent treatment liquid was not supplied to the hair roots.

From the data of Example 2, it is clear that the permanent treatment liquid comprising thioglycolic acid does not necessarily permeate to the hair root when the treatment is applied to the hair. Also, the necessity of providing the permanent treatment liquid to the hair roots is not apparent for a skilled person based on the disclosure of Takehana because a removal of a hair dressing and oil contents is not necessary in Takehana and Takehana does not concern growing new straight hair but only provides shaping the already grown hair.

8. Thus, the new straight hair does not grow according to the Takehana method which does not comprise adhering a permanent treatment liquid, which includes thioglycolic acid, to the position adjacent to the hair root, thereby permeating the permanent treatment liquid into the hair root.

9. Example 3: An Example of treating hair with the permanent treatment method described in Takehana. *See* Fig. 3.

The permanent treatment liquid, which includes thioglycolic acid, was adhered to the whole scalp including hair and the hair was pressed and held by a hair iron under a predetermined temperature.

Figure 3(a) and Figure 3(b) are photographs of the hair after the treatment and Figure 3(b) is an enlarged photograph of Figure 3(a). From Figure 3(a) and Figure 3(b), it is clear that by only applying the permanent treatment liquid to the hair and ironing the hair, the curly hair merely grows more curly and the newly grown hair is not straight. Further, when the

permanent treatment liquid enters the hair root, curly hair grows more curly. Therefore, a skilled person would not have applied the permanent treatment liquid to the scalp based on the disclosure of Takehana to obtain straight newly grown hair.

10. Thus, by only applying the permanent treatment liquid, which includes thioglycolic acid, to the whole scalp including hair, the curly hair merely grows more curly and the newly grown hair cannot be straight.

However, by adhering the permanent treatment liquid to the hair to the position adjacent to the hair root, and pulling the hairs with a force of 0.5 kg/cm^2 or more, as in the claimed method, the curly hair do not grow more curly and the curly hair can be shaped to straight hair and the newly grown hair is straight.

Therefore, we cannot agree the Examiner's assertion that when the hair treatment agent of Takehana is applied to the hair, the hair roots inherently are also treated.

11. Example 4: Another Example of treating hair with the permanent treatment method described in Takehana. See Fig. 4.

The permanent treatment liquid, which includes thioglycolic acid, was adhered to the position adjacent to the hair root, and the hair was pressed and held by a hair iron under a predetermined temperature.

From Figure 4(a), it is clear that the curly hair, of which the hair root is upright in the top of the head, grows more curly. Thus, when the hair root is upright, the treatment liquid is adhered to the hair root and the curly hair grows more curly.

From Figure 4(b) and Figure 4(c), it is clear that when the hair root is bending downward, the treatment liquid is hard to be adhered to the hair root and curly growing can be restrained.

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From Figure 4 (a), 4(b) and 4(c), it is clear that the treatment liquid is adhered to the hair root which is upright and so the curly hair can grow more curly but the newly grown hair does not grow straight.

12. The undersigned declare further that all statements made herein are of his own knowledge are true and that all statements made on information are believed to be true. Further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

ITSUO SAKAKIBARA
Signature

March 26 - 2010.
Date